IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4955 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

EXECUTIVE ENGINEER

Versus

LEGAL HEIRS OF BHAGWANBHAI KHODABHAI ALGOTAR

Appearance:

MS SEJAL K MANDAVIA for Petitioners

MR MAYUR S BAROT for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 20/06/2000

CAV JUDGEMENT

Learned Advocate Ms. Sejal K. Mandavia appearing on behalf of the petitioner and Learned Advocate Mr. M.S. Barot appearing on behalf of the

respondent. Rule, Mr.M.S. Barot Learned Advocate on behalf of respondent waives the service of rule with the consent of both the Learned Advocates, the matter has been taken up for final hearing today. In the present petition, the award passed by the Labour Court, Bhavnagar in Reference No.354 of 1991 dated 23rd October, 1987 has been challenged wherein, the Labour Court, Bhavnagar has granted full back wages from 21st March, 1991 to 14th July, 1996 with all consequential benefits of interim period. The brief facts of the present petition is that respondent was appointed in service about one year prior to date of termination 21st March, 1991. The finding of the Labour Court on the basis of legal evidence that respondent workman has completed one year continuous service and completed 240 days continuous service and these facts has not been disputed by the petitioner and Section 25-F has not been followed by the petitioner. Therefore, the Labour Court has come to the conclusion that order of termination passed by the petitioner is required to be set aside. During the pendency of reference the respondent workman was died on 14th July, 1996 and death certificate was produced before the Labour Court vide Ex.10 and mother Kankuben was joined as a party in the reference. Before the Labour Court Kankuben was examined and proved unemployed of the respondent workman. The petitioner has not examined any witnesses before the Labour Court. Therefore, the Labour Court has come to the conclusion that termination of respondent workman after completion of 240 days continuous service in violating Section 25-F of Industrial Disputes Act, 1947 is illegal, abinitio void. Therefore, the Labour Court has granted the full back wages from 21st March, 1991 to 14th July, 1996.

The Learned Advocate Ms. Mandavia submitted that the Labour Court has committed gross error in not to believed and relied upon documents which was produced by petitioner vide Ex.5 in respect to that inspite of repeated letters written to respondent workman to report for duty at Radhanpur but, respondent workman has not reported at Radhanpur. The Labour Court has not believed the said documents only on the ground that there is no signature, seal of respondent workman to receive such documents. Ms. Mandavia has produced on record the documents by draft amendment letter dated 18th May, 1991 at a respondent workman to report for duty at Radhanpur another letter dated 14th June, 1991 again requested to report at Radhanpur. Thereafter, third letter dated 14th August, 1991 informing to the respondent workman to report at Radhanpur within a seven days as a daily rated

employee. One acknowledgment was produced wherein, signature of respondent workman dated 16th June, 1991 has been there. Therefore, the contention of Ms. Mandavia that respondent workman after the date of termination dated 21st March, 1991 was informed by the petitioner to report at Radhanpur but, respondent workman has not reported at Radhanpur and therefore, the respondent workman is not entitled the back wages of interim period. She also produced on record letter dated 31st December, 1991 wherein, a letter of the Deputy Executive Engineer, Surendranagar pointing out all detail in respect to the respondent workman.

The Learned Advocate Mr. Barot appearing on behalf of the respondent has pointed out that before the Labour Court the documents which are produced before this Court were not produced by the petitioner. Mr. Barot further submitted that even if such letters written to the respondent but, if not received by the respondent then the respondent workman was right and can not considered that respondent workman intentionally not reported for work at Radhanpur. The document which has been produced by the petitioner before this Court same was not produced before the Labour Court and a acknowledgment of respondent workman dated 16th June, 1991 which was produced before this Court was not produced before the Labour Court. Therefore, the finding of the Labour Court should not be challenged by producing new evidence before the Labour Court. This Court can not considered new evidence and decided the finding of the Labour Court on the basis of new and fresh evidence.

I have considered the submission of both the learned advocates. One facts remain that these documents are relating to subsequent to the termination. Therefore, finding of the Labour Court setting aside termination order on the ground of violating provision of Section 25-F of the Industrial Disputes Act is can not be disturbed in light of subsequent documents. Therefore, finding of the Labour Court in respect to the fact that respondent workman has completed 240 days continuous service and Section 25-F has been violated is confirmed and same is not required to be disturbed.

Now question is required to be examined so far relating to the question of granting full back-wages of interim period as directed by the Labour Court. In the present case the termination was dated 21st March, 1991 and date of award is 23rd October, 1997. The net result is that the respondent who has worked about one year service with the petitioner, is entitled the salary of 5

years without worked in between. Whether in such circumstances, the full back wages can be granted or not. The reference is pending before the Labour Court for final decision up to six years. Petitioner is a public body and State Authority. Respondent was not a permanent workman. Considering these all aspects in such cases, the Apex Court has considered similar situation in case of H.M.T. Limited v. The Labour Court Ernakulam and Others reported in 1994(2) C.L.R. page-22. The Apex Court has observed that we don't find that any error has been committed by the High Court in up holding the award of the Labour Court reinstating the workman. However, we find that the dismissal of the workman was on July 30, 1979 and till date more than 14 years have elapsed. It is not accepted that no party should suffer on account of the delay in the decision by the Court. Taking all facts into consideration, we are of the view that it would meet the ends of justice in the present case if instead of full back wages, the workman concerned is given 60% back wages till he is reinstated. Similarly, recently such question has been examined by the Apex Court in the case of Management of M.C.D. Vs. Premchand Gupta reported in AIR 2000 S.C. Page 454. The Apex Court has observed that the reason for not granting full back wages from the date of his termination i.e. 29th April, 1966 till the actual reinstatement pursuant to the present order can now be indicated. Firstly, for no fault of the contesting parties, the litigation has lingered for more than 3 decades. To saddle the appellant corporation and its Exchequer which is meant for public benefit with full back wages for the entire period would be too harsh to the appellant Corporation. There is delay in disposal of cases in the courts, that has created this unfortunate situation for both the sides. The respondent workman is also not at fault as he was clamoring for justice for all these years. However, this delay in courts proceedings for no fault of either sides, permits us not to burden the appellant Corporation being a public body, with full back wages for the entire period of respondent workman unemployment especially when no fault of either side, actual work could not be taken from the respondent workman by the appellant Corporation. It is true that the respondent workman was always willing to work but he could not be permitted to work so long as the termination order stood against him. All these factors together point in the direction of not saddling the appellant Corporation, a public body with the burden of entire full back wages to be granted to the respondent workman after the passage of 33 years since his order of termination. The second reason is that the respondent workman for all these years could not have remained totally unemployed

though there is not clear evidence that he was gainfully employed and was so well off that he should be denied complete back wages but keeping in view the fact that for all these long years fortunately the respondent workman had survived and has still 2 more years to reach the age of superannuation as we are told that not granting of him full back wages, on the peculiar facts and circumstances of this case, would meet the end of justice. The appellant Corporation shall reinstate the respondent workman with continuity of service within 8 weeks from today and still also pay 50% back wages from the date of termination till his actual reinstatement in service of the appellant Corporation with continuity of service.

In light of the observations made by the Apex Court in two above referred cases, in the present case the termination of respondent workman was 21st March,1991, he completed more than one year service. He was not a permanent employee. He raised dispute against the termination within the reasonable time in the year 1991. The petitioner is a public body and state authority. The 6 years period has been passed in taking decision by the Labour Court in reference. Considering all these aspects and observations made by the Apex Court, the respondent is entitled to 60% back wages from the date of termination i.e. 21st March, 1991 to 14th July, 1996 date of death on the basis of continuity of service with all consequential benefits. If such direction will be given in respect to the back wages of interim period, which will meet the ends of justice between the parties.

Therefore, the award passed by the Labour Court, Surat in reference No.354 of 1991 dated 23rd October, 1997 is modified as under.

The respondent is entitled to 60% back-wages from the date of termination i.e. 21st March, 1991 till the date of death i.e. 14th July, 1996 on the basis of continuity of service with all consequential benefits. Therefore, the award of granting full back wages by the Labour Court is modified as above.

Therefore, present petition is partly allowed. Rule made absolute to that extent and it is directed to the petitioner to pay 60% back wages to the respondent-workman from the date of termination i.e. 21st March, 1991 till the date of death i.e. 14th July, 1996 on the basis of continuity of service with all consequential benefits within the period of six weeks from the date of receiving certified copy of this order.

In view of the above observation and direction, the present petition is partly allowed. Rule made absolute to that extent. No order as to costs.

Date : 20-06-2000. (H.K.RATHOD,J.)

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